

Decision 05-06-007 June 16, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Telepacket,
Inc. for a Certificate of Public Convenience and
Necessity to Provide Facilities-Based Local
Exchange Service Within the State of California.

Application 04-04-014
(Filed April 7, 2004)

**OPINION DISMISSING APPLICATION FOR FAILURE
TO COMPLETE THE APPLICATION**

I. Summary

This decision dismisses without prejudice the application of Telepacket, Inc. (Applicant) for a certificate of public convenience and necessity (CPCN) for authority to provide facilities-based and resold local exchange telecommunications services in this state, based on Applicant's failure to complete the application.

II. Discussion

On April 7, 2004, Applicant filed this application for a CPCN under Pub. Util. Code § 1001 for authority to provide facilities-based and resold local exchange telecommunications services throughout the state. However, the application did not include all of the information required for the Commission to reach a decision on this matter, such as certifications, the amount of any deposits that Applicant would be required to pay to other telecommunications carriers in order to provide service in this state, and proper financial documentation to

show that Applicant meets Commission financial requirements for the issuance of a CPCN. The assigned Administrative Law Judge (ALJ) therefore directed

Applicant on several occasions to make a supplemental filing that would include the required information. On July 15, 2004, Applicant filed a supplemental filing that contained the required certifications, but did not include satisfactory financial documentation or information regarding deposits.

In November 2004, Applicant's Director of Regulatory and Compliance advised the assigned ALJ that a consultant previously hired by Applicant to handle this application had resigned without giving notice to Applicant or informing Applicant of the Commission's pending request for additional information. The assigned ALJ directed Applicant to make a supplemental filing which included the required information by November 15, 2004. On November 22, 2004, Applicant requested an extension of time, but did not respond to inquiries from the assigned ALJ regarding the amount of time needed to complete the application or the reason for the delay. Applicant failed to make the supplemental filing as directed by the assigned ALJ.

On March 1, 2005, the assigned ALJ issued a ruling that required Applicant to make a supplemental filing which included proper financial documentation to show that Applicant meets Commission financial requirements and can pay any deposits that other telecommunications carriers may require in order for Applicant to provide service in California.

To date, Applicant has not made a supplemental filing which contains the required information and has not requested an extension of time in which to do so.

This application cannot be left open indefinitely. Applicant has been given more than a reasonable opportunity to complete its application for a CPCN and has failed to do so. Therefore, the application shall be dismissed without prejudice based on Applicant's failure to complete the application. This order

will be made effective immediately in order to clear this application from the Commission's list of active proceedings.

III. Categorization and Need for Hearings

In Resolution ALJ 176-3132 dated April 22, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Applicant has failed to complete this application, despite being given more than a reasonable opportunity to do so. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

IV. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

V. Comments on Draft Decision

The draft decision of ALJ Myra J. Prestidge in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77.1 of the Commission's Rules of Practice and Procedure. No comments were filed.

Findings of Fact

1. Applicant failed to respond to the assigned ALJ's March 1, 2005 ruling, which directed Applicant to file proper financial documentation to show that Applicant meets Commission financial requirements for issuance of a CPCN and can pay any deposits that may be required by other telecommunications carriers in order for Applicant to provide service in this state, in 30 days in order to avoid dismissal of the application without prejudice.
2. The application cannot be left open indefinitely.
3. Applicant has failed to complete the application, despite being given more than a reasonable opportunity to do so.

Conclusions of Law

1. The application should be dismissed without prejudice based on Applicant's failure to complete the application.
2. This order should be made effective immediately in order to clear this application from the Commission's list of active proceedings.

O R D E R

IT IS ORDERED that:

1. Application 04-04-014 is dismissed.
2. Application 04-04-014 is closed.

This order is effective today.

Dated June 16, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners